Supreme Court, U.S.
FILED

011625 MAY 02 2002

OFFICE OF THE CLERK

No. 01-

IN THE

Supreme Court of the United States

DAVID SOLOMON,

Petitioner

v.

SUPREME COURT OF FLORIDA, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE FLORIDA THIRD DISTRICT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

DAVID SOLOMON
880 Mandalay Avenue
Suite N-911
Clearwater, Florida 33767-1229
(727) 442-8600

Dated: May 2, 2002

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Will this Court enjoin[1] the admittedly unconstitutional state court order to correct the misunderstanding by the federal and state courts of Florida, the District of Columbia[2],

---

[1] Petitioner also seeks fees and damages. Please *Bradley v. Fisher,* 80 U.S. 335 (1872). *Bradley*'s holding is summarized in footnote 5, infra.

[2] 1983 suits were filed in the District of Columbia because ALL actions of at least forty of the respondents took place in the Willard Hotel. The three steps to punish attorneys are a trial, proposed punishment-opinion by the Board, and ratification and or amendment of the proposed punishment-opinion by the respondent-judges. The Board, as the official agents of the respondent-judges, conducted ALL activities concerning petitioner in the Willard Hotel.

and New York State[3] of the holding in *Pulliam*[4] concerning judicial immu-

---

[3] New York courts reciprocally suspended petitioner's New York law license based on Florida's admittedly unconstitutional order. New York required reinstatement by Florida as a pre-condition to reinstatement by New York.

[4] *Pulliam v. Allen*, 466 U.S. 522, 541 held,

"We remain steadfast in our conclusion, nevertheless, that Congress intended section 1983 to be an independent protection for federal rights and find nothing to suggest that Congress intended to expand the common-law doctrine of judicial immunity to insulate state judges completely from federal collateral review.

We conclude that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity."

nity? It appears that the orders of these courts mistakenly held that judicial immunity was a bar to trial court subject matter jurisdiction to enjoin the admittedly unconstitutional state court order. These courts mistakenly held this was particularly true since the injunction would have operated against a state's highest court.

LIST OF PARTIES

Petitioner is listed in the caption. Respondents are The Supreme Court of Florida, Hon. Major B. Harding, Hon. Ben F. Overton, Hon. Leander J. Shaw, Jr., Hon. Gerald Kogan, Hon. Stephen H. Grimes, Hon. Charles T. Wells, The Florida Bar, John F. Harkness, Jr., John T. Berry, Joseph A. Corsmeier, Jr., Florida Bar Board of Governors, Edith G. Osman, John W. Frost II, Edward B. Blumberg, Alan B. Bookman, Enoch J. Whitney, Charles A. Francis, Bruce

W. Robinson, Howard C. Coker, Henry M. Coxe III, Roger L. Rice, Morris Silberman, Anthony S. Battaglia, Edgar M. Dunn, Jr., James G. Feiber Jr., Bruce B. Blackwell, Lawrence J. Phalin, Jack P. Brandon, Miles A. McGrane III, Herman J. Russomanno, Tod Aronovitz, Manuel R. Morales, Cynthia A. Everett, John W. Thornton, Jr., Dean C. Colson, Stuart Z. Grossman, Scott L. Baena, John C. Patterson, Jr., Martin L. Garcia, Ricardo A. Fernandez, Marsha G. Rydberg, Dixon Ross McCloy, Jr., Carol McLean Brewer, Robert V. Romani, Michael P. Walsch, Allison Defoor II, Michele Kane Cummings, David D. Welsch, William S. Spencer, Jesse H. Diner, John Hume, S. Sammy Cacciatore, Jr., Louis B. Vocelle, Jr., John P. Cardillo, Marguerite S. Boyd, Robert Weinroth, Michael Stafford, Matthew J. Comisky, Adam G. Adams II, Wilhelmena Mack, and Alvin E. Smith, M.D.. Companion cases are pending before Judge Reggie B. Walton, United

States District Court for the District of Columbia and the District of Columbia Court of Appeals.

TABLE OF CONTENTS

QUESTION PRESENTED i

LIST OF PARTIES iii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

STATUTE INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING CERTIORARI 11

I. Certiorari To Correct The Misunderstanding By Federal and State Courts in Florida, the District of Columbia and New York State, That Judicial Immunity Bars Trial Court Sub-

ject Matter Jurisdiction To Enjoin Unconstitutional State Court Orders, Especially When That Injunction Would Operate Against a State's Highest Court. ... 14

The *Bush v. Gore* 2000 Election Recount Dispute. 16

II. Certiorari To Correct the Misunderstanding By Federal and State Courts in Florida, the District of Columbia, and New York State, That Because of Judicial Immunity, Only This Court Has Subject Matter Jurisdiction To Enjoin Unconstitutional State Court Orders, Especially Since The Injunction Would Have Operated Against

A State's Highest Court. 17

CONCLUSION 20

APPENDIX A 1a

APPENDIX B 3a

APPENDIX C 5a

TABLE OF AUTHORITIES

CASES:

Bradley v. Fisher,
80 U.S. 335 (1872) ..... i, 7n, 8n

Ex Parte Bradley,
74 U.S. 364 (1869) 8n

Florida Bar v. Solomon,
711 So.2d 1141 (1998) 3, 4

In re Ruffalo,
390 U.S. 544 (1968) 9n

Pulliam v. Allen,
466 U.S. 522 (1984) ..... *passim*

Solomon v. Florida Bar,
525 U.S. 965 (1998),
reh. denied 525 U.S. 1129
(1998) 4, 5

Statutes:

United States Code

28 U.S.C. § 1257(a) 1

42 U.S.C. § 1983 ..... 2, 6

OPINIONS BELOW

The opinion of the Dade County Circuit Court was not reported and is reprinted as Appendix A at page 1a. The opinion of the Florida Third District Court of Appeal was not reported and is reprinted as Appendix B at page 3a. The order of the Florida Third District Court of Appeal denying the timely filed motion for rehearing was not reported and is reprinted as Appendix C at page 5a.

JURISDICTION

The Florida Third District Court of Appeal entered judgment on December 19, 2001. The timely motion for rehearing was denied on February 1, 2002. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTE INVOLVED

Section 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. [underline supplied]

STATEMENT OF THE CASE

85 days after *Florida Bar v. Solomon,* 711 So.2d 1141 (1998) was final, respondent-judges admitted in the footnote of the unrelated *Vernell* case, that *Solomon* relied on an unconstitutional application of state law to violate petitioner's U.S. Constitutional right to notice and hearing. This was because *Solomon* held that petitioner's Florida law license was suspended based on matters, "that were not charged in the Bar's complaint". The *Vernell* footnote held that their "prior opinions" (orders) that punished an attorney based on matters, "that were not charged in the complaint" were unconstitutional. Even after respondent-judges admitted in the *Vernell* footnote that such "prior opinions" were unconstitutional, respondent-judges refused to relieve petitioner's law license from the admittedly unconstitutional order.

It appears that respondent-judges's[5] only "prior opinion" that made such an unconstitutional order was *Solomon.* It appears that respondent-judges deliberately avoided citing *Solomon* by name in the *Vernell* footnote. For a further discussion of the apparently deliberately misleading wording of *Solomon,* please see the petition for a writ of certiorari and the petition for rehearing filed with this Court in *Solomon v. Florida Bar,* 525 U.S. 965 (1998), *reh. denied* 525 U.S. 1129 (1998), USSC case number 98-425.

Petitioner cited the *Vernell* footnote to this Court in the petition for rehearing in *Solomon v. Florida Bar,* and to federal and state courts in Florida, the District of Columbia, and New York State in companion proceedings to enjoin respondent-

---

[5] This is the correct usage for such words that are the possessive of plural nouns.

judges's unconstitutional order. After respondent-judges apparently realized the indefensible legal position the *Vernell* footnote created against them in the companion proceedings, the respondent-judges altered and then omitted the *Vernell* footnote without changing the reversal of the *Vernell* trial court that was explained by the *Vernell* footnote. To see the original *Vernell* footnote, please see the petition for rehearing in *Solomon v. Florida Bar*.

Pulliam is the main case on which petitioner relies for section 1983 injunctive relief. *Pulliam* held that judicial immunity was not a bar to section 1983 injunctive relief. Footnote 6 in *Pulliam* observed that all six U.S. Courts of Appeals that faced this issue agreed that judicial immunity does not bar section 1983 injunctive relief. Respondent-judges and all other respondents in their single D.C. Court of Appeals answer brief admitted that, "*Pulliam* held

that the doctrine [judicial immunity] does not bar a suit for injunctive relief." Orally, and contrary to their brief, respondent-judges apparently intentionally and repeatedly misrepresented that judicial immunity does bar a trial court's subject matter jurisdiction to enjoin the respondent-judges's admittedly unconstitutional order. No court would rule on petitioner's motions to stop respondent-judges's apparently intentional misrepresentation of *Pulliam*'s holding that contradicted their brief. The orders of the courts of Florida, the District of Columbia, and New York State did not follow the respondent-judges's correct statement of *Pulliam*'s holding made in their brief. The orders followed the respondent-judges's apparently intentional oral misrepresentation of *Pulliam*'s holding.

Petitioner sued in Florida state court under section 1983 for injunc-

tive relief, damages[6] and attorneys fees. Petitioner's pleadings cited,

---

[6] *Bradley v. Fisher,* 80 U.S. 335 (1872) held,

> If the proceedings are void against an attorney, he would have an action for damages if interrupted or deprived of the privileges and emoluments conferred by the license . . . false entries made by a judge on the records of a court of general jurisdiction, are not judicial acts and are not within the discretion of the judge; and satisfactory proof of those facts is admissible in evidence to usurp the wrong done by such acts, to show that, in the particular case, the judge attempted to create for himself a jurisdiction and discretion not given by

> the law. [underline supplied]

Petitioner alleged that the order was unconstitutional because it held that it punished petitioner based on matters that were never charged. Petitioner further alleged that in addition to this basis for the unconstitutionality of the order, the order was based on what *Bradley v. Fisher* called "false entries". *Bradley v. Fisher*, after trial, denied damages because of "insufficient proof" of false entries. We have no such problem in our case because our proof of false entries is documentary proof. With regard to injunctive relief for attorney Bradley, three years earlier, *Ex Parte Bradley*, 74 U.S. 364 (1869) enjoined/vacated the unconstitutional order that struck attorney Bradley's name from the roll of attorneys because it was held to be a proceeding that violated his right to notice and hearing. The damage issue was de-

discussed and attached the four following documents, (1) *Pulliam,* (2) the respondent-judges's admission in the D.C. answer brief that, "*Pulliam* held that the doctrine [judicial immunity] does not bar a suit for injunctive relief", (3) the respondent-judges's admission in the *Vernell* footnote that the respondent-judges's "prior opinions" that punished attorneys based on matters that were never charged had violated the attorneys's constitutional right to notice and hearing, and (4) affidavits from former judges[7]

---

cided three years later. Please also see *In re Ruffalo,* 390 U.S. 544 (1968).

[7] Petitioner asked former Justice White for an affidavit and to be an expert witness before the D.C. courts. He declined because he explained that even though he was officially retired, he sometimes served as a senior judge in the D.C. federal courts, and if petitioner recalls correctly, sometimes on this Court.

of the highest courts of Florida and New York that swore that petitioner's law license should be relieved from the respondent-judges's unconstitutional order, especially since it was an order that the respondent-judges subsequently admitted was unconstitutional.

The hearing transcript shows that the Florida trial court paused during the hearing to read *Pulliam* for the first time. The transcript also shows that while the Florida trial court paused to read *Pulliam* during the hearing, in front of her stood the holding from page 541 of *Pulliam* on a four foot by three foot blow-up. Despite petitioner's efforts to impress the correct holding on page 541 of *Pulliam* on the federal and state courts in Florida, the District of Columbia, and New York State, these courts misunderstood *Pulliam's* holding. They mistakenly held that judicial immunity was a bar to trial court subject matter jurisdiction to enjoin

the admittedly unconstitutional state court order, especially since the injunction would have operated against a state's highest court. Due to this misunderstanding of *Pulliam's* holding, the courts refused to enjoin the respondent-judges's unconstitutional state court order. The courts refused to enjoin the unconstitutional order, despite the fact that the respondent-judges who wrote the unconstitutional order, admitted 85 days later that the order had violated petitioner's constitutional right to notice and hearing. This timely petition for a writ of certiorari followed.

REASONS FOR GRANTING CERTIORARI.

This Court should grant certiorari for two reasons. This Court should grant certiorari to correct two misunderstandings of *Pulliam's* holding that were made by the holdings of the federal and state courts of Florida, the District of Columbia and

New York State. The two misunderstandings were that (1) judicial immunity was a bar to trial court subject matter jurisdiction to enjoin the admittedly unconstitutional state court order, especially since the injunction would have operated against a state's highest court, and that (2) judicial immunity bars subject matter jurisdiction to enjoin the unconstitutional state court order in all courts except this Court, especially since the injunction would have operated against a state's highest court.

Pulliam on page 528 observed that "injunctive relief against a judge is rarely awarded". This may explain why the federal and state courts of Florida, the District of Columbia, and New York State do not understand that *Pulliam* held that section 1983 vests trial courts with subject matter jurisdiction to enjoin unconstitutional state court orders, even when the injunction would operate against a state's highest court.

Although injunctive relief against a judge is rarely awarded, it is important for this Court to correct any misunderstandings on this issue on the rare occasions when it has the opportunity to do so. It is important to correct any mistaken misunderstandings and mistaken holdings concerning the boundaries of judicial immunity. This is because even though the boundaries of judicial immunity are rarely crossed, the boundaries of judicial immunity underlies every case in every court.

I. Certiorari To Correct The Misunderstanding By Federal and State Courts in Florida, the District of Columbia and New York State, That Judicial Immunity Bars Trial Court Subject Matter Jurisdiction To Enjoin Unconstitutional State Court Orders, Especially When That Injunction Would Operate Against a State's Highest Court.

Federal and state courts in Florida, New York and the District of Columbia apparently misunderstand this Court's holding on page 541 of *Pulliam*. If the federal and state courts in Florida, the District of Columbia, and New York State apparently do not understand that *Pulliam* held that trial courts have subject matter jurisdiction to enjoin respondent-judges's unconstitutional state court order, even to issue an injunction that would operate against a state's highest court, it appears likely

that federal and state courts in other states will also not understand that trial courts have subject matter jurisdiction to enjoin unconstitutional state court orders, even when the injunction would operate against a state's highest court. Hopefully, use of the words, "trial court subject matter jurisdiction" to correct *Pulliam*'s misunderstood holding will assist federal and state courts to correctly understand that judicial immunity is not a bar to trial court subject matter jurisdiction to enjoin unconstitutional state court orders, even when the injunction would operate against a state's highest court. If this Court corrects *Pulliam*'s misunderstood holding in this case, it will create local case law in the federal and state courts of Florida, New York, and the District of Columbia.

The *Bush v. Gore* 2000 Election Recount Dispute.

To correct *Pulliam*'s misunderstood holding against these particular respondent-judges will be an effective way to communicate that judicial immunity does not bar a trial court's subject matter jurisdiction to enjoin unconstitutional state court orders, even when the injunction would operate against a state's highest court. This is because world attention was recently focused on these particular respondent-judges for their role in the *Bush v. Gore* 2000 election recount dispute. Correcting *Pulliam*'s misunderstood holding should reduce the work of this Court because trial courts should then understand that judicial immunity does not bar trial court subject matter jurisdiction to enjoin unconstitutional state court orders, even when the injunction would operate against a state's highest court. This Court should accept certiorari to correct the

misunderstanding by the federal and state courts of Florida, the District of Columbia, and New York State that judicial immunity does not bar trial court subject matter jurisdiction to enjoin unconstitutional state court orders, even when that injunction would operate against a state's highest court.

II. Certiorari To Correct the Misunderstanding By Federal and State Courts in Florida, the District of Columbia, and New York State, That Because of Judicial Immunity, Only This Court Has Subject Matter Jurisdiction To Enjoin Unconstitutional State Court Orders, Especially Since The Injunction Would Have Operated Against A State's Highest Court.

It appears that unless this Court corrects *Pulliam*'s misunderstood holding, federal law is meaningless

against the defense of judicial immunity. This Court's 1998 statistical sheet illustrates this point. Petitioner filed for certiorari in this Court in 1998 to enjoin enforcement by the state bar against respondent-judges's admittedly unconstitutional order. This Court declined review. In 1998, this Court was asked to review 8,003 cases, but accepted only 81. This means there is a less than one in one hundred chance that a case that requests review will receive review. If all cases that could have requested certiorari are counted, the chances of review by this Court to protect federal rights against the mistaken defense of judicial immunity are probably astronomical. Petitioner made this argument to the federal and state courts in Florida, the District of Columbia and New York State. The federal and state courts in Florida, the District of Columbia, and New York State appear to have mistakenly held that because of judicial immunity, that only this Court has subject

matter jurisdiction to enjoin respondent-judges's unconstitutional order, especially since the injunction would have operated against a state's highest court. Even when faced with this Court's 1998 statistical sheet, all of these courts apparently could not understand that federal law is meaningless against the defense of judicial immunity if the trial courts do not have subject matter jurisdiction to enjoin unconstitutional state court orders, even when the injunction would operate against a state's highest court. This Court should accept certiorari to protect federal rights against the mistaken understanding by the federal and state courts of Florida, the District of Columbia, and New York State that judicial immunity vests subject matter jurisdiction to enjoin unconstitutional state court orders only in this Court, especially when the injunction would operate against a state's highest court.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

DAVID SOLOMON
880 Mandalay Avenue
Suite N-911
Clearwater, Florida 33767-1229
(727) 442-8600

APPENDIX A

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2002
FEBRUARY 1, 2002

DAVID SOLOMON,
CASE NO. 3D00-3499

Appellant(s)/Petitioner(e),

vs.

SUPREME COURT OF FLORIDA
ET AL.,
APPELLEE(S)/RESPONDENT(S).

LOWER
TRIBUNAL NO. 00-7024

Upon consideration, appellant's motion for rehearing is hereby denied. SORONDO and RAMIREZ, JJ., and NESBITT, Senior Judge, concur.

cc:
David Solomon
Barry Richard
George L. Waas

APPENDIX B

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2001

DAVID SOLOMON **
Appellant, **

vs. **

SUPREME COURT OF **
FLORIDA, et al., **

Appellees. **

CASE NO. 3D00-3499
LOWER TRIBUNAL NO. 00-7024

Opinion filed December 19, 2001.

An Appeal from the Circuit Court for Miami-Dade County, Amy N. Dean, Judge.

David Solomon, in proper person.

Robert A. Butterworth, Attorney General, and George Waas, Assistant Attorney General, and Barry Richard, for appellees.

Before SORONDO, and RAMIREZ, JJ., and NESBITT, Senior Judge.

PER CURIAM.

Affirmed.

APPENDIX C

IN THE CIRCUIT COURT, FOR THE ELEVENTH JUDICIAL CIRCUIT, DADE COUNTY, FLORIDA

DAVID SOLOMON,

Plaintiff,

v. Case No. 00-7024 CA 06

SUPREME COURT OF FLORIDA, et al.,

Defendants.

_____/

DISMISSAL OF COMPLAINT WITH PREJUDICE

This cause having come on to be heard on the motions of defendants to dismiss, and the Court having considered the legal authority presented for and against the motions, and having found that the Complaint fails to state a cause of action and that the Court is without subject matter jurisdiction, it is

ORDER AND ADJUDGED that the Complaint is DISMISSED WITH PREJUDICE as to all defendants.

Done & ordered in Miami-Dade County, Fla. on September 19, 2000

/s/

AMY N. DEAN
CIRCUIT JUDGE